IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 98 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRALAL VALLABHBHAI PATEL

Versus

MANIBHAI JIVANBHAI PATEL

Appearance:

MR BJ JADEJA for Petitioners

MR RN SHAH for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/02/2001

ORAL JUDGEMENT

#. The petitioners herein are the original defendants against whom the respondents herein have filed the suit, being Regular Civil Suit No.671/93. The same is pending

in the trial court. It is the case of the plaintiffs in the said suit that, they are cultivating the part of Survey Nos.38, 19-1-2 and 19-1-3 as the tenants under the Tenancy Act. That the defendants have trespassed upon the lands in question and have destroyed the crops of sugarcane which has resulted in loss of about Rs.60,000/-. Over and above, there is further damage to other crops. So, ultimately in order to recover the loss of Rs.1,15,000/-, the aforesaid suit has been filed by the plaintiffs.

#. The said suit was resisted by the defendants by filing the written statement at Exh.12. As per the said written statement, it is the say of the defendants that, they had filed the suit against the present plaintiffs for negative declaration and the same was registered as Tenancy Case No.3/90 wherein it was prayed that the plaintiffs are not their tenants. The said case was dismissed on the ground of limitation, but an appeal against the same was allowed by the Deputy Collector.

#. In that view of the matter, it cannot be said that the plaintiffs are the tenants of the defendants, though according to them, the order in question was stayed by the Gujarat Revenue Tribunal in revision. Rest of the averments are not relevant for the purpose of deciding this revision application, but so far as the question about trespass is concerned, it is stated that they have not damaged any crops. That the defendants are cultivating the lands from the branch of one Madhubhai Bhanabhai and since 1.5.1965, they are cultivating the lands as owners. It is also averred in the written statement that the defendants have also filed Special Civil Suit No.233/93 for recovery of certain amounts from the plaintiffs for loss and also by way of getting mesne profits and as a counter-blast, the plaintiffs have filed the present suit. On these and such other grounds, the aforesaid suit was resisted by the defendants.

#. During the pendency of the said suit, an application Exh.50 was given by the defendants for the purpose of amendment of the written statement. The said application was given under Order 6, Rule 17 of the Civil Procedure Code. The defendants wanted to add one paragraph regarding non-maintainability of the suit as well as regarding right of the plaintiffs to file such suit against the defendants. By virtue of adding paragraph 2(1) in the original written statement, the defendants wanted to high-light the fact about earlier suit which was filed by the plaintiffs in the court of Civil Judge (Junior Division) Vyara, being Regular Civil Suit

No.64/88. It is the say of the defendants in the application that, since the earlier suit was dismissed for default and since the present suit and the earlier suit are based on the same cause of action, the present suit is not maintainable. The learned trial Judge rejected the said application on the ground that the causes of action of both the suits are different. Ultimately, application Exh.50 was rejected by the trial court.

#. The original defendants have challenged the aforesaid order below Exh.50 by filing the present revision application.

#. It is required to be noted that, normally the amendment in the pleadings should be allowed to be granted liberally and ultimately on such pleadings, the suit is required to be proceeded on merits. By granting the amendment in the pleadings, the court is not deciding the rights in favour of any party. In the instant case, defendants only wanted to plead some factual aspects by amending the paragraph 2(1) in the original written statement. So far as the question whether the suit is maintainable or not is concerned, it is of-course the question of law which the parties can definitely argue before the court during the trial. Now so far as the amendment of paragraph 2(1) is concerned, it relates to the factual aspects of earlier suit, being Regular Civil Suit No.64/88. Now, whether the cause of action of earlier suit and the present suit is the same or different is the question which is required to be decided at the time of trial. Instead, the learned trial Judge has gone on the merits of the case, whether the present suit is maintainable or not in view of earlier suit. In my view, this question is required to be addressed only after the amendment is granted and not before that. While deciding the application, it was not necessary for the trial court at that stage to go into the merits of the pleadings, but the trial court should have decided the aforesaid question whether the cause of action of both the suits is the same or not, only at the time of deciding the suit and not at the time of deciding the amendment application. By granting the amendment, the plaintiffs are not going to be prejudiced in any manner. The amendment in question is most innocuous and even otherwise, normally the amendment in the written statement is required to be granted liberally.

#. In the aforesaid facts and circumstances of the case, therefore, amendment as prayed for by the defendants in their application Exh.50 is required to be allowed.

However, it is clarified that the question whether the present suit of the plaintiffs is barred in view of the dismissal of earlier suit, being Regular Civil Suit No.64/88, is the question which is required to be decided only at the time of trial itself. It is open for the trial court to take the decision on the same on merits at the time of giving findings whether the present suit is barred or maintainable in view of dismissal of earlier suit or not. It will be open for the court to consider whether the cause of action of both the suits are the same or different. All these questions are kept open and such questions are to be decided by giving appropriate findings on particular issue which is required to be framed on the basis of the pleadings in the suit. At present, I am only granting the amendment and all these questions about maintainability of the suit etc. are kept open. By granting the amendment, it cannot be inferred that the suit of the plaintiffs is not maintainable. Only thing is that the defendants are permitted to add these factual aspects in their written statement and the findings are required to be given on merits of the case after the evidence is led and after hearing both the sides.

#. Subject to the aforesaid clarification, the application for amendment is allowed. The petitioners are permitted to amend the written statement as prayed in their application Exh.50. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)